

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 162

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO WORKER'S COMPENSATION; AMENDING SECTION 72-319, IDAHO CODE, TO PROVIDE PENALTIES FOR EMPLOYERS WHO INTENTIONALLY AND WILLFULLY FAIL TO SECURE THE PAYMENT OF COMPENSATION AND TO PROVIDE AN ADDITIONAL FACTOR THE COMMISSION MAY CONSIDER IN DETERMINING WHETHER PENALTIES SHOULD BE ASSESSED AND COLLECTED; AMENDING SECTION 72-506, IDAHO CODE, TO PROVIDE FOR AN APPEAL TO THE FULL INDUSTRIAL COMMISSION ON CERTAIN MATTERS; AMENDING SECTION 72-508, IDAHO CODE, TO PROVIDE FOR RULES OF PRACTICE AND PROCEDURE FOR MATTERS OF THE INDUSTRIAL COMMISSION AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 72-319, Idaho Code, be, and the same is hereby amended to read as follows:

72-319. PENALTY FOR FAILURE TO SECURE COMPENSATION. (1) Any employer required to secure the payment of compensation under this law who fails to secure the payment thereof shall be guilty of a misdemeanor. In any case where the employer is a corporation or a limited liability company, any officer or employee of the corporation or manager or employee of a limited liability company who had authority to secure payment of compensation on behalf of the corporation or limited liability company and failed to do so shall individually be guilty of a misdemeanor.

(2) Such officer, employee or manager shall be personally liable jointly and severally with such corporation or limited liability company for any compensation which may accrue under this law in respect to any injury or occupational disease suffered by any employee of such corporation or limited liability company while it shall so fail to secure the payment of compensation.

(3) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes or destroys any property or records belonging to such employer, after one (1) of its employees has been afflicted by an injury or occupational disease, with intent to avoid the payment of compensation to such employee or his dependents, shall be guilty of a misdemeanor. In any case where such employer is a corporation or limited liability company, any officer, employee or manager thereof, if knowingly participating or acquiescing in any such act, shall also be individually guilty of a misdemeanor.

(4) Any employer required to secure the payment of compensation under this law, who intentionally and willfully fails to do so, may be liable for a penalty of either two dollars (\$2.00) for each employee for each day or twenty-five dollars (\$25.00) for each day during which such failure continues, whichever is greater, and in cases where the employer is a corporation or limited liability company and is unable to pay the fine, any officer or employee

of the corporation or manager of a limited liability company who had authority to secure payment of compensation on behalf of the corporation or a limited liability company and failed to do so, shall be liable for a like penalty, to be recovered for the time during which such failure continued, but for not more than three (3) consecutive years, in an action brought by the commission in the name of the state of Idaho; any amount so collected shall be paid into the industrial administration fund; for this purpose the district court of any county in which the employer carries on any part of its trade or occupation shall have jurisdiction. In determining whether penalties should be assessed or collected for the employer's failure to secure the payment of compensation, the commission may consider the following factors:

- (a) When the employer was notified that such employer's worker's compensation insurance coverage had been cancelled or that such insurance was required;
- (b) The length of time that elapsed between when the employer was notified that worker's compensation insurance coverage was required or that such employer's coverage had been cancelled, and the date that such coverage was put into effect;
- (c) Whether the employer is able to document attempts to secure worker's compensation insurance coverage during the period of time that such employer was without such coverage;
- (d) Whether there were prior instances in which the employer failed to keep worker's compensation insurance in effect or such coverage was cancelled, and the reasons for such failure or cancellation;
- (e) The reasons that the employer is unable to obtain or keep in effect worker's compensation insurance coverage;
- (f) Whether the employer had knowledge or reason to know of the requirement to carry worker's compensation insurance coverage.

The above factors are not exclusive and the commission may consider any other relevant factor.

(5) If any employer required to secure the payment of compensation under this law is or has been in default under section 72-301, Idaho Code, the employer may be enjoined by the district court of any county in which such employer carries on any part of its trade or occupation from carrying on such business while any default under section 72-301, Idaho Code, exists. All proceedings in the courts under this section are to be brought by the industrial commission in the name of the state of Idaho.

(6) An employer who fails to secure the payment of compensation and who has been assessed a penalty within the previous three (3) years pursuant to section 72-319(4), Idaho Code, shall be liable for the following penalty in addition to the penalty provided by section 72-319(4), Idaho Code:

- (a) Five hundred dollars (\$500) for the second failure to secure the payment of compensation;
- (b) One thousand dollars (\$1,000) for the third and any subsequent failure to secure the payment of compensation.

SECTION 2. That Section 72-506, Idaho Code, be, and the same is hereby amended to read as follows:

72-506. ACTS OF COMMISSION OR REFERENCE – HEARING OFFICERS. (1) Any investigation, inquiry or hearing which the commission has power to undertake or hold may be undertaken or held by or before any member thereof or any hearing officer, referee or examiner appointed by the commission for that purpose.

1 (2) Every finding, order, decision or award made by any member, hearing officer, referee,
2 or examiner pursuant to such investigation, inquiry or hearing, ~~when~~ shall be subject to appeal
3 and a hearing before the full commission pursuant to the rules of practice and procedure the
4 commission has adopted. If the finding, order, decision or award made by any member, hearing
5 officer, referee, or examiner pursuant to such investigation, inquiry or hearing is approved and
6 confirmed by the commission, and ordered filed in its office, it shall be deemed to be the
7 finding, order, decision or award of the commission.

8 SECTION 3. That Section 72-508, Idaho Code, be, and the same is hereby amended to
9 read as follows:

10 72-508. AUTHORITY TO ADOPT RULES ~~AND REGULATIONS~~. Pursuant to
11 the provisions of chapter 52, title 67, Idaho Code, the commission shall have authority to
12 promulgate and adopt reasonable rules ~~and regulations~~ for effecting the purposes of this
13 act. The commission shall promulgate rules of practice and procedure for matters of the
14 commission. The commission may use the rules of practice and procedure of the attorney
15 general. Notwithstanding the provisions of chapter 52, title 67, Idaho Code, the commission
16 shall have authority to promulgate and adopt reasonable rules ~~and regulations~~ involving judicial
17 matters. In administrative matters and all other matters, the commission shall be bound by
18 the provisions of chapter 52, title 67, Idaho Code. Rules ~~and regulations~~ as promulgated and
19 adopted, if not inconsistent with law, shall be binding in the administration of this law.